

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
JUN 8 1996

In the Matter of)	
)	
Amendment of Part 90 of the)	
Commission's Rules to Facilitate)	PR Docket No. 93-144
Future Development of SMR Systems)	GN Docket No. <u>93-252</u>
In the 800 MHz Frequency Band)	PP Docket No. 93-253

To: The Commission

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PETITION FOR RECONSIDERATION OF
GENERAL MOTORS RESEARCH CORPORATION

General Motors Research Corporation ("GMRC"), a subsidiary of General Motors Corporation ("GM"), hereby files this petition for reconsideration of the First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking ("Order") issued by the Commission in the above-captioned dockets, FCC 95-501, on December 15, 1995.

The Commission addressed many different issues affecting the use of 800 MHz channels in its December 15 Order. Among other things, the Commission redesignated for commercial SMR use exclusively the General Category channels in the 806-810/851-855 bands.^{1/} Order at para. 137. The General Category channels previously were open to, and currently are being used by, all Part 90 eligibles, including public safety, special emergency, industrial and land transportation eligibles as well

^{1/} The Commission has decided to rename the 150 General Category 800 MHz channels (channels 1-150) as "Spectrum Block D" channels. For ease of reference, in this petition GMRC will continue to refer to 800 MHz channels 1-150 as General Category channels.

as SMRs. In the proposed rulemaking portion of the Order, the Commission solicited comments on, inter alia, whether non-SMR incumbents on General Category channels should be subject to mandatory relocation. GMRC and others filed comments opposing mandatory relocation of non-SMR incumbents on General Category channels. In this petition, GMRC requests reconsideration of that aspect of the Commission's Order redesignating the General Category channels in the 806-810/851-855 MHz bands for commercial SMR use exclusively.

I. GM IS A LICENSEE OF 800 MHZ NON-SMR FREQUENCIES WHICH IN NON-BORDER REGIONS OF THE COUNTRY ARE CLASSIFIED AS GENERAL CATEGORY CHANNELS

General Motors Corporation and its affiliates have used the private radio spectrum for 40 years for communications related to the protection of life and property as well as for coordination of their labor and material resources. Among the many private radio licenses held by GMRC is one for a 20-channel 800 MHz trunked radio system in the Detroit, Flint, and Pontiac, Michigan area. This system provides mobile communications critical to the following General Motors automotive production activities in Michigan: maintaining GM production lines at efficient operational levels, coordinating "just-in-time" inventory deliveries, providing security and emergency response necessary for the protection of human lives and property, and numerous other maintenance, engineering, environmental, and supervisory functions necessary for the efficient operation of

GM's manufacturing facilities in this key geographic area. GMRC does not use the 20-channel trunked system to provide for-profit commercial communications service to third parties unaffiliated with GM's manufacturing activities.

Twelve of the twenty channels in GMRC's trunked Michigan system utilize frequencies below 854.4765 MHz which in most areas of the country are considered General Category channels. These twelve channels are an integral part of the 20-channel trunked system which GM utilizes extensively every day to increase the efficiency and productivity of its businesses and to maintain its competitiveness in the face of formidable challenges from domestic and foreign manufacturers. GM does not and cannot separate its use of the 12 channels licensed in the frequencies below 854.4765 from its use of the other eight channels in the 20-channel trunked system.

GM, through another of its subsidiaries, also operates a trunked 800 MHz system on General Category channels in Doraville, Georgia. This system also is integral to GM's business operations. GM, therefore, will be affected adversely by any Commission decision which impairs the use of its licensed General Category channels for non-commercial private mobile radio service.

**II. THE COMMISSION HAS FAILED TO PROVIDE A RATIONAL BASIS
FOR THE REDESIGNATION OF THE GENERAL CATEGORY CHANNELS**

In an earlier phase of this proceeding, the Commission expressed concern that allowing SMR use of General Category

channels could result in a scarcity of frequencies for private mobile radio systems and tentatively determined that General Category channels should not be subject to competitive bidding. Amendment of Part 90 of the Commission's Rules to Facilitate Future Development Of SMR Systems In The 800 MHz Frequency Band, FCC 94-271, at para. 52:

General Category Channels are expressly designated for use not only by SMR licensees, but also by Public Safety licensees and PMRS [private land mobile radio service] providers in the Industrial/Land Transportation and Business service categories. Because we have allocated these channels for extensive PMRS as well as CMRS use, we determined in the *Competitive Bidding Second Report and Order* that these channels are not subject to competitive bidding. [Footnote omitted.] Consequently, we are concerned that continuing to allow SMR applications for these channels could result in a scarcity of frequencies for PMRS use.

In the December 15 Order, however, the Commission changed its position and decided to designate the General Category channels exclusively for SMR use. While the Commission under appropriate circumstances lawfully may change its policies regarding the licensing of General Category channels, the Commission must supply a reasoned analysis indicating that its prior standards are being deliberately changed and not blithely cast aside. Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42, 49 (D.C. Cir. 1994); Greater Boston Television Corporation v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). The Commission's decision to redesignate the General Category channels exclusively for SMR use fails this test. The

Commission completely ignored its prior expressed concern that a practical consequence of the continued availability of General Category channels to SMRs would be a scarcity of frequencies available for non-SMR users. The Commission did not even attempt to reconcile this concern with its decision to reduce even further the amount of spectrum available to non-SMR users.

The only articulated basis for the Commission's change in position is its assertion that "the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service." Order at para. 137. As pointed out in the notice of proposed rulemaking phase of this proceeding, however, the available data do not support the Commission's assertion. ITA states that almost one quarter of the General Category licensees are non-SMRs, comprising more than 3,450 non-commercial systems.^{2/} Moreover, UTC explains that even channel counts are not a fair indication of General Category usage, because many of the SMR licenses within the General Category must be considered to have been issued to speculators.^{3/} Indeed, as UTC further explains, the numbers of commercial and non-commercial license grants in the General Category do not accurately depict demand and usage of these channels but rather reflect the different licensing policies adopted by the Commission, policies which

^{2/} Reply Comments of the Industrial Telecommunications Association et al. ("ITA"), PR Docket No. 93-144, March 1, 1996, at 6.

^{3/} See Comments of UTC, PR Docket No. 93-144, February 15, 1996, at 3-4.

require a more stringent showing of need for additional spectrum by non-SMRs than by SMRs.^{4/}

The Commission's redesignation decision should be reconsidered on even more fundamental policy grounds also. The Commission's decision to foreclose the future licensing of General Category channels to non-commercial industrial and business operators will harm American industry's competitiveness in the world marketplace by limiting the flexibility of American manufacturers. The specialized communications requirements of manufacturers, utilities and other industrial users cannot be satisfied by commercial carriers. Nor do the communications requirements of these important private communications users conform to the service area boundaries that might be predesignated by the Commission to facilitate the auctioning of spectrum to commercial wireless service providers. U.S. and worldwide markets do not remain static, and incumbent non-SMR licensees such as GMRC cannot remain competitive if their private communications systems effectively are locked in place and cannot be expanded or modified to meet the changing circumstances of their U.S. business operations.

**III. THE COMMISSION MUST CLARIFY THAT THE DECEMBER 15 ORDER
DID NOT REDESIGNATE CHANNELS 1-150 WITHIN THE BORDER
AREAS AS SMR**

Upon reconsideration, the Commission expressly should address the special circumstances affecting the General Category

^{4/} Id. at 4.

channels in the Canadian border region. As explained by Consumers Power Company in the rulemaking phase of this proceeding, channels 1-150 are categorized as General Category channels in non-border regions of the country but were divided among the three non-commercial categories and the SMR service in the Canadian border region.^{5/} As a result, in certain Canadian border regions there are no General Category channels. ITA has confirmed that across the eight Canadian border regions and the Mexican border region, less than one percent of the so-called General Category channels would be available for SMR licensing.^{6/}

To the extent the Commission does not reconsider its decision to redesignate the General Category channels exclusively for SMR use, the Commission at the least should clarify that 800 MHZ channels 1-150 (which are classified as General Category channels in non-border regions) cannot and have not been redesignated for SMR use in the Canadian border region. The Commission expressly should state that non-SMR incumbents in the Canadian border regions may continue to use and, depending on channel availability, be allowed to expand and modify their 800 MHZ systems on channels 1-150.

^{5/} Comments of Consumers Power Company, PR Docket No. 93-144, February 15, 1996, at 4-5.

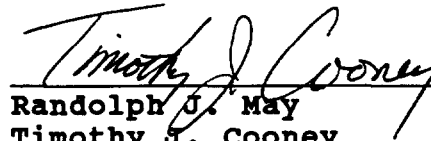
^{6/} Reply Comments of ITA et al., PR Docket No. 93-144, March 1, 1996, at 10.

IV. CONCLUSION

For the foregoing reasons, the Commission should reconsider its redesignation of the 800 MHz General Category channels exclusively for SMR use.

Respectfully submitted,

GENERAL MOTORS RESEARCH CORPORATION

A handwritten signature in dark ink, appearing to read "Timothy J. Cooney", is written over a horizontal line.

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March 18, 1996